

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LEE MURRAY SYKES,	)	
	)	
Petitioner,	)	2:10-cv-00494-GMN-LRL
	)	
vs.	)	
	)	ORDER
ANTHONY SCILLIA, et al.,	)	
	)	
Respondents.	)	
	/	

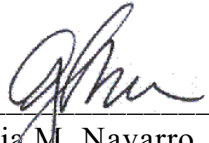
Before the Court is petitioner's Motion to Withdraw the Court Order and to Consider New Evidence (ECF No. 30) together with a Motion for Enlargement of Time (ECF No. 31) requesting an additional 45 days to respond to the Court's recently issued Order to Show Cause. Petitioner complains that he was not afforded the appropriate time to file his reply to the response to his motion for reconsideration. He further wishes to present new evidence that was not part of his original motion for reconsideration or, apparently, his response to the Motion to Dismiss. Such evidence is untimely and unpersuasive. Exhaustion of a claim requires that it be presented to the state's highest court for consideration. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). Thus, issues raised in a post-conviction petition, but not presented for review by the Nevada Supreme Court cannot be considered exhausted.

Having again considered the motion and related briefing, and for the reasons set forth in the respondents' opposition, the Court finds that reconsideration is not warranted as petitioner

1 offers nothing new to establish the Court's review and conclusions were erroneous. *See School*  
2 *Distt. No. 1J, Multhnomah Cty. v. Acands, Inc.*, 5 F.3d 1255, 1263 (9<sup>th</sup> Cir. 1993). The Motion to  
3 Withdraw Order (ECF No. 30) is **denied**.

4 The Court's order granting the motion to dismiss and requiring petitioner to make his  
5 election as to how to proceed was originally issued on February 23, 2011. Petitioner has had more  
6 than ample time to evaluate his options and to make an informed decision. An additional 45 days is  
7 not warranted. The Motion for Enlargement of Time (EF No. 31) is **denied**. **He shall have to and**  
8 **including May 13, 2011 to make his election. Failure to do so will result in dismissal of his**  
9 **petition.**

10 **IT IS SO ORDERED** this 3rd day of May, 2011.

11  
12   
13 \_\_\_\_\_  
14 Gloria M. Navarro  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26